



Comptroller General
of the United States

45865

Washington, D.C. 20548

Decision

Matter of: Moon Engineering Co., Inc.

File: B-256079

Date: May 5, 1994

Thomas J. Touhey, Esq., and Donald A. Tobin, Esq., Bastianelli, Brown & Touhey, for the protester, Joseph P. Grassi, Department of the Navy, for the agency, Jacqueline Maeder, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that awardee was given an unfair competitive advantage since awardee planned to remove portion of mast from ship at government pier in order to permit access to contractor's facility in order to perform contract is denied where nothing in the solicitation prohibited the use of a government pier to perform structural work when necessary to allow access into contractor's facility and protester was not prejudiced by awardee's proposed use of the government pier.

DECISION

Moon Engineering Co., Inc. protests the award of a contract to Marine Hydraulics International, Inc. under request for proposals (RFP) No. N62678-93-R-0154, issued by the Department of the Navy for phased maintenance work on the U.S.S. Pensacola. Moon alleges that the agency is permitting Marine to perform work at a government pier, contrary to the terms of the solicitation, and that other offerors were not granted similar use, resulting in an unfair competition.

We deny the protest.

The solicitation contemplated the award of a firm, fixed-price contract for mechanical, electronic, electrical, and structural repairs on the U.S.S. Pensacola. The RFP provided that award would be made to the responsible offeror that submitted the lowest-priced offer which conformed to the solicitation.

The RFP stated that offerors were to perform all work required by the solicitation at the contractor's plant and

specified that the successful offeror would be responsible for structural or ballasting changes to the ship as required to permit passage and clearance of navigational hazards or obstructions, such as bridges and power lines, preventing access to the contractor's plant. All costs of such structural changes were to be included in the offeror's price.

Six proposals were submitted, including proposals from Moon and Marine. Pre-award surveys were conducted on Moon and Marine as the two low price offerors. During the pre-award survey, Marine indicated that it would have to remove the upper portion of the U.S.S. Pensacola's mast in order to allow access into its plant. Marine submitted a preliminary plan which stated that Marine intended to remove and reinstall a portion of the mast at a government pier before and after completing the contract.¹

Best and final offers (BAFO) were received from all six offerors and, based on its low price of \$2,582,180, award was made to Marine on December 15.² A contract modification, which was issued contemporaneously with award, stated that the U.S.S. Pensacola's mast must be removed to allow the vessel to enter Marine's facility. The modification provided that there would be no increase in the contract price or change in the completion date as a result of the modification.

Moon alleges that the solicitation did not provide that the contractor would be given access to the vessel at a government pier or that the contractor could use a government facility to perform work on the vessel, including the removal and reinstallation of the mast. According to the protester, Marine will require 2 to 3 days to remove the mast and 2 to 3 days to reinstall the mast and, during this time period, Marine "intends to perform other front-end contract work" while the vessel is docked at the government pier. The protester argues that the agency never advised other offerors that "they could perform up to six days of the contract work at a Government pier . . . which would drastically reduce the services cost each offeror had to include in [its] price."³ Moon argues that Marine's use of the government pier at no cost gave Marine an unfair competitive advantage.

¹Moon did not have to perform any structural or ballasting work on the vessel to permit access to Moon's facility.

²Moon's price was \$2,635,177.

³Examples of services the protester identifies include heat, electricity, and security.

The protester speculates that, contrary to the requirement that all contract work be performed at the contractor's plant, Marine intends to perform contract work while the vessel is docked at a government pier. There is nothing in the record to support this allegation. The protester has not identified any specific maintenance work that it believes Marine intends to accomplish at the government pier; the agency denies that it will allow Marine to perform phased maintenance work at the government pier; and, as noted above, the plan submitted by Marine shows that Marine will use the government pier for the limited purpose of removing and reinstalling the mast. Additionally, Marine's proposal shows the commencement date of each maintenance item as after the date of delivery at its facility-- indicating its intent to perform all maintenance work at its own plant. Because there is no evidence that the awardee will not adhere to the RFP's requirement that all maintenance work must be completed at the contractor's plant and in view of the fact that Moon's allegation is unsupported and appears to be mere speculation, this ground of protest is denied. See Systems & Defense Servs. Int'l, B-254254.2, Feb. 9, 1994, 94-1 CPD ¶ 91; Physio Control Corp.; Medical Research Labs., Inc., B-231999.2; B-231999.3, Aug. 10, 1989, 89-2 CPD ¶ 123.

Although Moon argues that the RFP did not allow removal and reinstallation of the mast at a government pier, we disagree. The RFP specifically allowed for structural changes to the vessel when necessary to provide access to a contractor's plant, but did not state where these structural changes were to be accomplished. These structural changes were not included in the maintenance specifications to be accomplished under the contract and thus do not have to be completed at the contractor's plant. Moreover, it is clear that if structural changes are required to provide access to the contractor's plant, they must be completed somewhere other than the contractor's plant. It would have been preferable for the RFP to state that offerors could use a government pier for structural changes and to indicate that there would be a charge for such usage. Nonetheless, we believe that the RFP gave sufficient notice that such structural changes would have to be performed elsewhere, for example, at a privately owned pier or, as here, at a government pier. We find nothing in the RFP to prohibit the use of the government pier for completing the structural changes required to gain access to Marine's facility in order to perform the contract.

Further, we do not see how the protester was prejudiced by Marine's proposed use of the government pier. Indeed, Moon does not explain or demonstrate how its own proposal would have been different had it known that it could use a government pier to accomplish structural changes since, as

noted above, Moon would not need to remove the mast or make other structural changes to gain access to Moon's facility. Therefore, there was no reason to include costs associated with removal and reinstallation of the mast in Moon's proposal. Moreover, the agency reports that it now plans to charge Marine for government pier services and that these services will cost between \$4,000 and \$8,000. The protester does not rebut these figures. Since Moon's price is approximately \$53,000 higher than Marine's price, and the contract was to be awarded to the responsible offeror submitting the low-priced, technically acceptable proposal, we conclude that Moon was not prejudiced by Marine's plan to use the government pier since Moon's price would not have been as low as the awardee's price even with the addition of \$8,000 for use of the government's pier. Competitive prejudice is an essential element of a viable protest; where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. See MetaMetrics, Inc., B-248603.2, Oct. 30, 1992, 92-2 CPD ¶ 306.

Accordingly, the protest is denied.

Robert P. Murphy
for Robert P. Murphy
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